

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

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LLC

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/807, 737 02/27/97 OHTANI

H 0756-1638

EXAMINER

022204
NIXON PEABODY, LLP
8180 GREENSBORO DRIVE
SUITE 800
MCLEAN VA 22102

MMC2/0509

PERT, E	ART UNIT	PAPER NUMBER
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2813
DATE MAILED:

05/09/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)
	08/807,737	OHTANI ET AL.
Examiner	Art Unit	
Evan T. Pert	2813	

-- The MAILING DATE of this communication appears in the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 19 March 2001.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 19-84 is/are pending in the application.

4a) Of the above claim(s) 19-59, 63-71, 75-80, and 82 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 60-62, 72-74, 81, 83 and 84 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are objected to by the Examiner.

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) Notice of References Cited (PTO-892)

16) Notice of Draftsperson's Patent Drawing Review (PTO-948)

17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 37.

18) Interview Summary (PTO-413) Paper No(s). _____

19) Notice of Informal Patent Application (PTO-152)

20) Other: _____

Art Unit: 2829

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

ETP

September 30, 2002



9/30/02

MICHAEL SHERRY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

DETAILED ACTION

Election/Restrictions

1. Applicant presented new generic claim 84, which the examiner properly rejects. Claims 19-59, 63-71, 75-80 and 82 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to non-elected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 40.

Accordingly, claims 60-63, 72-74, 81 and 83-84 are pending for consideration.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 60-62, 72-74, 81 and 83-84 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitation of "containing at least one of hydrogen and oxygen" in independent claims 60, 72 and 84 is unclear. The metes and bounds of oxygen and/or hydrogen concentration in the silicon nitride film are unclear in the claims. Applicant has consistently failed to properly address this issue. The 112 rejections remain.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claim 84 is rejected under 35 U.S.C. 102(a) as being anticipated by JP 6-267978 in view of Wolf.

Wolf is relied on only as a teaching reference, teaching that "PECVD silicon tends to be nonstoichiometric and contains substantial quantities of atomic hydrogen (10-30 at%)" [1st sentence of 4th full paragraph on page 274, emphasis added].

Thus, it is inherent for PECVD-deposited silicon nitride to have a very high quantity of "at least one of hydrogen and oxygen", as is claimed by applicant.

JP 6-267978 teaches forming a silicon nitride film 4 "over" a substrate 1 using PECVD (and therefore having inherent hydrogen at significant levels) [abstract]; forming an amorphous silicon layer 1 on the silicon nitride; disposing Ni in contact with a selected portion of the semiconductor film [Fig. 1D]; and then heating the semiconductor film to crystallize it, taking advantage of the Ni "catalyst" action to lower crystallization temperature [abstract].

Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 60-62, 72-74, 81 and 83-84 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 5,643,826 in view of JP 6-267978.

As set forth in the rejection of generic claim 84 above, the other pending claims being considered are obvious in view of the teachings of JP 6-267978. One of ordinary skill in the art would learn from Ohtani et al. the advantage of using a liquid solution to introduce Ni to the amorphous film, as opposed to the implantation seemingly suggested by JP 6-267978 in Fig. 1D. For example, one of ordinary skill in the art might rather practice a step of dipping in a liquid rather than a more involved implantation set-up: the liquid is simpler and less expensive to apply.

Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Evan T. Pert whose telephone number is 703-306-5689. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Bowers can be reached on 703-308-2417. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 for regular communications and 703-308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

ETP
May 5, 2001



Tuan H. Nguyen
Primary Examiner